

Gorman Machine Corporation and Charles R. Austin and Richard F. Poirier. Cases 1-CA-16594 and 1-CA-17101

July 22, 1981

### DECISION AND ORDER

On January 15, 1981, Administrative Law Judge Elbert D. Gadsden issued the attached Decision in this proceeding. Thereafter, both Respondent and the General Counsel filed exceptions and supporting briefs, and the General Counsel filed an answering brief to Respondent's exceptions.

The National Labor Relations Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,<sup>1</sup> and conclusions of the Administrative Law Judge and to adopt his recommended Order, as modified herein.

1. The Administrative Law Judge found that Respondent violated Section 8(a)(1) by, *inter alia*, the posting of a notice to the employees on July 17, 1979,<sup>2</sup> and by two statements regarding the Union made by Foreman Don Cobis after the election. We disagree with the Administrative Law Judge's conclusion that these specific acts were unlawful.

As to the posting, the parties stipulated that Respondent posted a notice signed by Respondent President Ken Gorman on the employees' bulletin board on July 17, 3 days prior to the election. The text of the notice was as follows:

To Gorman Employees:

<sup>1</sup> Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

Additionally, the General Counsel and Respondent have excepted to certain factual statements appearing in the Administrative Law Judge's Decision. We have reviewed his Decision in light of the record evidence and hereby make the following factual corrections.

The Administrative Law Judge stated that between April 6 and August 14, 1979, there were four employees working in Respondent's assembly department. However, the record reveals that during this time there were five employees working in this department and an additional employee who was on sick leave.

The Administrative Law Judge related the testimony of Richard Porter regarding a conversation between Porter and Foreman Don Cobis wherein Cobis asked him if he supported the Union. According to the Administrative Law Judge, Porter testified that this conversation occurred on July 7, 1979. However, the record reveals that the date given by Porter for this conversation was July 17, 1979.

The Administrative Law Judge found that Foreman Cobis unlawfully interrogated employees between July 19 and 20, 1979. However, the record reveals that these unlawful interrogations occurred between July 16 and 20, 1979.

The Administrative Law Judge related the testimony of Richard Porter regarding a meeting on August 7, 1979, at which time Cobis announced there would be no more overtime work for the assembly department employees. However, in one sentence the Administrative Law Judge incorrectly identified Porter as Charles Austin.

<sup>2</sup> All dates hereafter are in 1979 unless otherwise noted.

The accompanying notice must be posted 72 hours prior to an election.

We must admit that we were somewhat surprised that our employees found it necessary to even consider that a third party might be necessary to insure good-will between themselves and management. We had been under the impression that any difficulties could be mutually resolved to the satisfaction of all concerned merely by the meeting of the concerned parties, as has always been done in the past. We hope you will use your good judgment in the matter of this election, and not be unduly influenced by anyone.

Since moving into this building almost a year ago, we have increased the number of persons actually making and assembling parts by 50 percent (from 15 to 22 employees). However, our production has increased only 15 percent, which shows that some persons are not pulling their weight.

The only way a small company can prosper and simultaneously increase wages is to increase production per person by methods, suggestions, and endeavor. I hope we may all be back working constructively again after a pleasant vacation, without looking forward to unknown troubles on our return.

The Administrative Law Judge, focusing on the statement that "some persons are not pulling their weight," concluded that the notice unlawfully intimidated the employees. We disagree. The notice merely expressed Respondent's position that production per employee had decreased and that any increase in wages was dependent on an increase in employee productivity. We note that Respondent's statements were based on objective criteria that are not alleged to be incorrect and that the notice contained no threats, either explicit or implicit, of retaliation or other dire consequences as a result of the union campaign. Under these circumstances, we find the notice to be a lawful expression of Respondent's opinion, and we hereby dismiss this allegation of complaint.

As to the statements regarding the Union made by Foreman Don Cobis after the election, the record evidence disclosed that in late August, during the time the Union and Respondent were engaged in contract negotiations, employee Richard Porter overheard Foreman Cobis say to employee Jesse Leite, "You should see the demands that the Union is asking . . . They are ridiculous; just like the bozos who want the union." The second statement occurred in late September during a conversation between Cobis and employee

Cummings, which Porter also overheard. Cummings asked Cobis if October 1, the day of Pope John Paul II's arrival in Boston, was going to be a holiday for the employees. Cobis, turning to the posted list of holidays, answered, "As far as I can read, the next holiday is Columbus Day. Can't you read that, or are you union material?"

The Administrative Law Judge concluded that these statements were made in an effort to intimidate the employees and denigrate the Union. We disagree. It was not alleged, nor was there evidence adduced, that these statements were part of any pattern or campaign on Respondent's part to erode the Union's support after the election. Under these circumstances, we view Cobis' statements depicting union adherents as "bozos" and illiterates as merely expressions of his personal opinion which could not reasonably tend to threaten or coerce any employee in violation of his Section 7 rights. Accordingly, we hereby dismiss these allegations of the complaint.

2. The Administrative Law Judge found that Respondent violated Section 8(a)(3) of the Act by failing to assign overtime work to the assembly employees on July 21 and by subsequently eliminating their overtime work altogether on August 7. We agree, for the reasons stated by the Administrative Law Judge, that Respondent's elimination of overtime work on August 7 was motivated by the employees' union activities, thereby constituting a violation of Section 8(a)(3) and (1).<sup>3</sup> However, we disagree with the Administrative Law Judge that Respondent's failure to assign overtime to the assembly department employees on July 21 was unlawful.

The record evidence disclosed that Respondent's plant closed for vacation between July 21 and August 5. In accordance with past practice, Respondent needed a few employees to work some hours overtime on Saturday, July 21, to prepare the plant for reopening after vacation on August 6. Although, prior to July 21, Respondent had assigned assembly department employees to perform overtime work on Saturdays, none of them was so assigned on July 21. The Administrative Law Judge, in view of the proximity of this apparent change in Respondent's past practice to the Union's victory in the July 20 election, concluded that the change was motivated by the union activities of the assembly employees, who were undisputedly the leading union adherents. We disagree. For the reasons stated below, we find that Respondent demonstrated that the same action would have occurred

even in the absence of the employees' union activities.

Respondent demonstrated that the overtime work performed on July 21 was not similar to that performed on previous Saturdays. It is undisputed that the overtime work performed by the assembly employees prior to July 21 was production work. However, Foreman Cobis testified, without contradiction, that the overtime work performed on July 21 was not production work but work related to preparing Respondent's plant for reopening on August 6, including such tasks as cleaning and straightening. Cobis also testified, without contradiction, that the employees to whom he assigned the July 21 overtime, unlike the assembly employees, were familiar with Respondent's procedures in preparing the plant for reopening. Moreover, we note that the record is silent regarding which employees in which departments performed this particular overtime work in previous years. Nor is there evidence indicating that any assembly employee had been previously informed that he would be working overtime on July 21. Under these circumstances, we cannot conclude that Respondent's action was discriminatorily motivated. Accordingly, we hereby dismiss this allegation of the complaint.

3. The Administrative Law Judge found that Respondent discharged Charles Austin and Richard Poirier in violation of Section 8(a)(3) and (1) of the Act. For the reasons stated below, we find, in agreement with the Administrative Law Judge, that Austin's discharge was unlawful, but we find, contrary to the Administrative Law Judge, that Poirier's discharge was lawful.

In finding Austin's discharge to be unlawful, the Administrative Law Judge indicated both that the reasons advanced by Respondent for Austin's discharge were pretextual and that the discharge was "substantially, if not totally" motivated by Austin's union activities. For the reasons stated below, we find no support in the record for the Administrative Law Judge's latter position, indicating that Respondent demonstrated a legitimate business reason for discharging Austin; rather, we find that Respondent's alleged reasons for discharging Austin were pretextual and that Respondent's sole motivation in discharging Austin was Austin's union activities.

The record evidence revealed that Austin began employment in Respondent's assembly department on September 8, 1978. During the Union's organizational campaign among Respondent's employees, Austin signed a union authorization card, solicited other employees to sign authorization cards, attended union meetings, and discussed the Union

<sup>3</sup> In his recommended Order the Administrative Law Judge inadvertently omitted Charles Austin's name from the list of employees to be reimbursed for lost overtime. Accordingly, we shall modify the recommended Order so as to include Charles Austin's name.

with employees practically every day. On August 16, as more fully set forth in the Administrative Law Judge's Decision, Austin solicited employee Jack Crowley to join the Union. On the following morning Foreman Cobis reprimanded Austin for talking about union activities on company time.

On August 27, when Austin arrived at work, Cobis informed him that he was being laid off. Later that day Austin asked Respondent's president, Ken Gorman, whether he was being laid off, and Gorman said "yes." Austin asked why, and Gorman replied that his work was unsuitable. On August 29, Austin received a letter from Respondent informing him that he had been terminated due to "unsuitability for the job." During Austin's final day of employment on August 30, leadman Bob Lombard expressed surprise to Austin that Austin had been terminated. Prior to his termination, Austin had received no warnings relating to his work.

Upon this record we conclude that the General Counsel has established that Austin's union activities were a motivating factor in Respondent's decision to discharge<sup>4</sup> him. Thus, the General Counsel clearly demonstrated that Austin was a leading union advocate. Furthermore, we find that Respondent knew of his union activities. Indeed, in view of Foreman Cobis' reprimand to Austin on August 17 not to talk about union activities on company time, Respondent's knowledge cannot be seriously questioned. In addition, we find that the timing of the discharge, occurring in proximity to Cobis' reprimand, and the absence of any prior warnings to Austin in regard to his work warrant drawing an inference of unlawful discriminatory treatment.

We further find, in agreement with the Administrative Law Judge, that Respondent's alleged reasons for discharging Austin were "contrived, as a pretext, to conceal its otherwise discriminatory and unlawful layoff and discharge of him . . . ." The reasons advanced by Respondent for Austin's discharge were the unsuitability of his work, his excessive talking, and the return of Bob Lombard as leadman in the assembly department on August 6. However, each of these reasons is unsupported by the record. Thus, as noted *supra*, Respondent never issued to Austin prior to his discharge any warnings regarding his work but rather tolerated whatever deficiencies Austin displayed. Moreover, the credited evidence established that Austin's talking

on the job was no worse than that of any other employee. Furthermore, although Bob Lombard's return to the assembly department increased the size and efficiency of that department, at the time of Austin's discharge Lombard had been working less than 1 month and Respondent was admittedly 4 months behind schedule in the delivery of finished products to its customers. These facts cast doubt on Respondent's contention that there was no work for Austin to perform, especially in light of the fact that overtime work had been eliminated in response to the employees' vote in favor of the Union. In any event, we find that the record warrants an inference that Respondent did not in fact rely on Bob Lombard's return in its decision to discharge Austin. In this regard, we note that Respondent never asserted to Austin that his discharge was necessitated by Lombard's return. Moreover, Respondent adduced no evidence of any plan to reduce the size of the assembly department formulated prior to Austin's discharge. To the contrary, Lombard, who was leadman in the assembly department, expressed surprise to Austin that he was terminated. Accordingly, in light of the pretextual nature of Respondent's asserted reasons for Austin's discharge, we find that Respondent violated Section 8(a)(3) and (1) of the Act by its August 30 discharge of Austin.

In regard to Poirier, the evidence revealed that he began employment with Respondent on October 20, 1978. During the Union's organizational campaign, Poirier signed an authorization card and attended a union meeting. On July 16 or 17, in response to a question from Foreman Cobis, Poirier indicated to Cobis that he was favorable to the Union and had a withdrawal card from the Union, having formerly been a member of it. Immediately following the election on July 20, Cobis thanked Poirier for the way he had voted. Poirier responded that he could not know how he voted since it was a secret-ballot election. Cobis stated that he knew and shook his head.

Poirier was frequently absent from work because of alcoholism.<sup>5</sup> After one of Poirier's absences in January or February, Cobis told Poirier, "Look Dick, you can't keep on. If you do it again, we are going to have to let you go." Poirier left work at noon on August 17, and because of his drinking ended up in a detoxification center for the next 10 days. During that time Poirier's girlfriend notified Respondent of Poirier's whereabouts.

<sup>4</sup> The record contains conflicting evidence as to whether Austin was laid off or discharged by Respondent. However, Respondent's president testified that Austin's employment was "definitely through" and that Austin would not be rehired by Respondent. Under these circumstances, we find that the Administrative Law Judge correctly characterized Respondent's action regarding Austin as a discharge.

<sup>5</sup> Poirier missed the following days of work: January 10 through January 12, January 22 through January 23, February 5 through February 9, March 30 through April 19, April 30 through May 7, July 1 through July 10, from noon on July 13 through July 16, and from noon on August 17 through August 27.

By letter dated August 27, Respondent terminated Poirier "due to excessive absenteeism."

Upon this evidence the Administrative Law Judge concluded that Respondent's discharge of Poirier was motivated by his union activities. The Administrative Law Judge based his conclusion upon Respondent's knowledge of Poirier's support of the Union, the timing of the discharge, and Respondent's failure to execute its threat in January or February to discharge Poirier after his next unexcused absence.

However, from our examination of the record, we are unable to conclude that Respondent's decision to terminate Poirier was motivated by anything other than his absences due to alcoholism. Indeed, contrary to the Administrative Law Judge, we find that the timing of Poirier's discharge supports Respondent's position. Thus, although Respondent clearly knew of Poirier's support for the Union, Poirier, unlike Austin, engaged in no union activities in proximity to his discharge. Moreover, Respondent's decision to discharge Poirier was made after Poirier had been absent from work for over 1 week, and Respondent had no idea when or if Poirier would return to work. Further, unlike the Administrative Law Judge, we are unwilling to draw any adverse inference from Respondent's failure to discharge Poirier after one of his prior unexcused absences. In this regard, we note that Respondent's witnesses testified, without contradiction, that, prior to Poirier's absence beginning August 17, Respondent President Gorman had no knowledge of Poirier's history of absences and, upon his being so informed on August 25, immediately made the decision to discharge Poirier. This fact, coupled with the absence of any union activities by Poirier in proximity with his discharge and Respondent's prior warning to Poirier regarding his absences, demonstrates that Respondent's discharge of Poirier was motivated by Poirier's excessive absences. Accordingly, we hereby dismiss this allegation of the complaint.<sup>6</sup>

#### AMENDED CONCLUSIONS OF LAW

Substitute the following for paragraph 9:

<sup>6</sup> In the section of his Decision entitled "The Remedy," the Administrative Law Judge stated that he would include in his recommended Order the broad cease-and-desist language "in any other manner." The Administrative Law Judge, however, inadvertently failed to include any general injunctive language in his recommended Order, although he did include the broad language in his notice. We have considered this case in light of the standards set forth in *Hickmott Foods, Inc.*, 242 NLRB 1357 (1979), and have concluded that a broad remedial order is inappropriate inasmuch as it has not been shown that Respondent has a proclivity to violate the Act or has engaged in such egregious or widespread misconduct as to demonstrate a general disregard for the employees' fundamental statutory rights. Accordingly, we shall modify the recommended Order and notice so as to use the narrow injunctive language "in any like or related manner."

"9. By discriminatorily discharging Charles Austin on August 30, 1979, Respondent violated Section 8(a)(3) and (1) of the Act."

Delete paragraph 6 and renumber the subsequent paragraphs accordingly.

#### ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, Gorman Machine Corporation, Brockton, Massachusetts, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

1. Insert the following as paragraph 1(h):

"(h) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of their rights under Section 7 of the Act."

2. Delete paragraph 1(d) and reletter the subsequent paragraphs accordingly.

3. Substitute the following for paragraphs 2(a) and (b):

"(a) Reinstatement and offer to assembly department employees overtime work as it was formerly scheduled, and reimburse Charles Austin, Richard Poirier, Richard Porter, Walter Yerkins, and Thomas Dower for moneys they lost as a result of the unlawful elimination of overtime work.

"(b) Offer to Charles Austin immediate and full reinstatement to his former position or, if such position no longer exists, to a substantially equivalent position without prejudice to his seniority or other rights previously enjoyed, and make him whole for any loss of pay suffered by reason of the discrimination against him, with interest, in the manner described in the section of this Decision entitled "The Remedy."<sup>7</sup>

4. Substitute the attached notice for that of the Administrative Law Judge.

IT IS FURTHER ORDERED that the complaint allegations as to which no violations have been found be, and they hereby are, dismissed.

<sup>7</sup> Member Jenkins would provide interest on the backpay award in accordance with his partial dissent in *Olympic Medical Corporation*, 250 NLRB 146 (1980).



## APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

After a hearing at which all parties had an opportunity to present evidence, the National Labor Relations Board has found that we violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

WE WILL NOT restrain or coerce our employees in the exercise of their protected rights by:

- (a) Interrogating employees about their union interests, desires, and activities.
- (b) Creating the impression among employees that their union activities are under surveillance by the Company.
- (c) Telling employees their overtime work is eliminated because the Union won the election.
- (d) Reprimanding employees for talking to other employees on behalf of the Union.

WE WILL NOT discourage employees' membership in, or support for, General Teamsters, Chauffeurs, Warehousemen and Helpers of Brockton, Local 653, or any other labor organization, by eliminating their overtime work, by discharging them because they support the Union or because the Union won the election, or by otherwise discriminating against them in respect to their tenure of employment or any term or condition of employment.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them in Section 7 of the Act.

WE WILL reinstitute overtime work for assembly employees as formerly scheduled, and reimburse assemblers Charles Austin, Richard Poirier, Richard Porter, Walter Yerkins, and Thomas Dower for any loss of overtime earnings occasioned by the unlawful elimination of such overtime work.

WE WILL offer Charles Austin immediate reinstatement to his former position or, if such position no longer exists, to a substantially equivalent position without prejudice to his seniority or other rights previously enjoyed, and WE WILL make him whole for any loss of pay suffered by reason of our discrimination against him, with interest.

All our employees are free to become, or remain, or refuse to become or remain, members of Gener-

al Teamsters, Chauffeurs, Warehousemen and Helpers of Brockton, Local 653, or any other labor organization.

## GORMAN MACHINE CORPORATION

## DECISION

## STATEMENT OF THE CASE

ELBERT D. GADSDEN, Administrative Law Judge: Upon charges of unfair labor practices filed on September 20, 1979, and January 28, 1980, by individuals Charles R. Austin and Richard F. Poirier, respectively, against Gorman Machine Corporation, an original complaint and an order consolidating cases and an amended complaint and notice of hearing were issued by the Regional Director for Region 1 on behalf of the General Counsel on November 13, 1979, and March 6, 1980, respectively.

In substance the amended complaint alleged that on and since July 17, 1979, Respondent has interfered with, restrained, and coerced its employees by interrogating them about their union sympathies; that after a Board-conducted election on July 20, 1979, Respondent told employees they could not thereafter work overtime; that, on or about August 7, Respondent told employees overtime work in their department was eliminated because of the result of the union election; that on July 20, 1979, Respondent created the impression among employees that their union activities were under surveillance by Respondent; that on August 17, 1979, Respondent reprimanded employees for talking to fellow employees about the Union; that in September 1979 Respondent ridiculed an employee by a reference to his ability to read and his union membership; and that on July 18, 1979, Respondent threatened employees with increasing their workload, all in violation of Section 8(a)(1) of the Act. It further alleged that on July 21 and August 11, 1979, Respondent discriminated against its employees by refusing to schedule overtime work for employees; and that Respondent discharged Richard Poirier on August 27, 1979, and discharged Charles Austin on August 31, 1979, because they joined or assisted the Union, or engaged in other concerted activities, in violation of Section 8(a)(1) and (3) of the Act.

Respondent filed answers to the initial and consolidated complaints on November 19, 1979, and March 10, 1980, respectively, denying that it had engaged in any unfair labor practices as alleged in the consolidated complaint. The hearing in the above matter was held before me in Boston, Massachusetts, on March 27 and 28 and April 23 and 24, 1980. Briefs have been received from counsel for the General Counsel and counsel for Respondent, respectively, which have been carefully considered.

Upon the entire record in this case and from my observation of the witnesses, I hereby make the following:

## FINDINGS OF FACT

## I. JURISDICTION

Respondent is now, and has been at all times material herein, a corporation duly organized under, and existing by virtue of, the laws of the Commonwealth of Massachusetts. It maintains a principal office and place of business at 7 Burke Drive, Brockton, Massachusetts, where it is now and continuously has been engaged at said plant in the manufacture, sale, and distribution of coil winding machinery and related products.

In the course and conduct of its business, Respondent annually receives goods valued in excess of \$50,000 at its Brockton plant shipped directly from points located outside the Commonwealth of Massachusetts. Correspondingly, Respondent annually ships goods valued in excess of \$50,000 from its Brockton plant directly to points located outside the Commonwealth of Massachusetts.

The complaint alleges, Respondent admits, and I find that Respondent is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

## II. THE LABOR ORGANIZATION INVOLVED

The complaint alleges, the answer admits, and I find that General Teamsters, Chauffeurs, Warehousemen and Helpers of Brockton, Local 653, herein called the Union, is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

## III. THE ALLEGED UNFAIR LABOR PRACTICES

## A. Background Facts

Respondent is a Massachusetts corporation maintaining a principal office and place of business at 7 Burke Drive in Brockton, Massachusetts, where it is engaged in the manufacture, sale, and distribution of coil winding machinery and related products. The machines wind copper wire on forms; this product is used in all kinds of electrical devices and instruments in the electronics industry. Respondent guarantees its machines and therefore performs repair work on machines which it has sold in past years. More specifically, Respondent manufactures five different machines identified as follows: Model 920, Model Producto, Model 2 + 2, Model Spinwinder, and Model HDH.

The Model 2 + 2 and the Model 920 are more difficult and take longer to assemble. The easiest of Respondent's machines to assemble is the Model Producto. Some of the parts which go into Respondent's machines are manufactured and sold to Respondent by outside vendors, and other parts are milled by Respondent's machinists from materials which Respondent orders from outside manufacturers. Such parts are electronic motors, castings, switches, and relays. Respondent nevertheless mills such parts as motor mounts and brackets. It does not do sheet metal work or chrome plating. Parts necessitating such work are obtained from outside vendors.<sup>1</sup>

<sup>1</sup> The facts set forth above are not in conflict in the record.

## B. Respondent's Assembly Department

All machines made by Respondent (the 920, Model Producto, Model 2 + 2, the Spinwinder, and the HDH) are assembled in Respondent's assembly department. In August 1978, Respondent moved its present plant from Randolph to Brockton. At the time of the move, Respondent employed two assemblers in its assembly department, leadman Robert (Bob) Lombard and his son, Donald (Don) Lombard. Bob Lombard was in the employ of Respondent for about 18 years and was the most highly skilled machinist in the assembly department. He was capable of milling or making numerous parts which were installed in the several machines manufactured by Respondent. On September 14, 1978, Bob Lombard advised Respondent that he was moving to Texas, which in fact he did. His son, Don Lombard, became leadman in the assembly department, which then consisted of himself, Don Lombard, Richard Porter, and Charles Austin.

The following persons were hired by Respondent in the assembly department on the respective dates: Richard Poirier, October 20, 1978; Robert Powers, December 11, 1978; and John Crowley, February 27, 1979.

On March 3, 1979, leadman Don Lombard left the employ of Respondent and Richard Porter became leadman in the assembly department. Powers' employment was terminated on March 15, 1979, and Walter Yerkins was transferred from wiring to the assembly department. On March 21, 1979, Thomas Dower was hired to work in the assembly department and from April 5 to August 14, 1979, John Crowley was absent due to illness. Consequently, between April 6 and August 14, 1979, there were four employees working in Respondent's assembly department. Richard Porter was the most experienced assembler in the department, having been employed 1 year at the time Don Lombard left the Company on March 3, 1979.

Bob Lombard testified that on April 23, 1979, he telephoned Respondent long distance from Texas and asked Foreman Don Cobis if he could have his job back in assembly. Cobis said, "You're welcome to come back at any time." Bob Lombard said he telephoned Foreman Cobis again on May 26, 1979, to confirm whether he had a job and was assured by Cobis that he would be employed. On June 16, 1979, Lombard again called Respondent and advised Foreman Cobis that he was leaving Texas and would arrive in Brockton for work on August 6, 1979.<sup>2</sup>

The undisputed evidence of record established that Respondent has always had a backlog of 4 months in delivering its machines to customers. It was also established

<sup>2</sup> I credit Bob Lombard's testimony to the effect that he called Respondent (Foreman Cobis) long distance on three occasions prior to August 1979 because his calls were substantiated by documentary (telephone pay records) evidence. I further credit Lombard's account of his telephone conversations with Respondent not only because I was persuaded by his demeanor on the witness stand that he was truthful, but also because the undisputed evidence shows he did in fact voluntarily leave Respondent's employ and move to Texas. In all probability he did have to make the inquiries and followup contact with Respondent in order to return at the time he did return. At least it is reasonable to believe that he did so.

that Respondent has always had a parts flow problem preventing the complete assembly of machines on hand in the assembly department. Thus, although Respondent advertises that it will deliver its products within 1 month, in fact its backlog of 4 months has existed for the past 4 years.

*C. Union Activity of the Employees and Respondent's Reactions Thereto*

According to the undisputed testimony of leadman Richard Porter and assembler Charles (Charlie) Austin, Porter commenced distributing union authorization cards to the employees in the entire shop in June 1979. When Porter solicited Austin for union membership, the latter responded in the affirmative, completed an authorization card, and attended a union meeting before the election and a union meeting after the election. Austin also solicited signatures of fellow employees and held discussions with them just about every day prior to the union election on July 20, 1979. Practically all the shop employees, approximately 17, attended the first union meeting at the Club National in Brockton prior to the election. Most of the employees in the shop signed union authorization cards. Initially, it was Porter who contacted the Teamsters Union after the employees approached him and said they wanted a union. Porter was joined by his cousin, Michael Mann, in visiting the Union. All five employees in the assembly department, which included Porter, signed union authorization cards and Porter served as an observer for the Union during the election on July 20. Richard Poirier also received an authorization card from Porter which he signed in June; he thereafter attended a union meeting before the election.

On June 22, 1979, the Union filed a representation petition with the Board to represent Respondent's production and maintenance employees and, on July 17, Respondent posted a preelection notice on the employees' bulletin board.

*D. Supervisors' Conversations With Employees About Their Organizing Interest*

Assembler leadman Richard Porter testified that, on or about July 16, Foreman Cobis told him he (Cobis) understood there was going to be a union meeting and, if so, he felt it only fair to post a notice so that everyone in the shop would know about it, because there were some hurt feelings about not being contacted about the Union. Porter said he agreed with Cobis and prepared and posted such a notice. He further testified that, during the morning of July 7, the following conversation occurred between himself and Cobis:

A. Mr. Cobis came up to me and asked for my—he said, "For my personal enlightenment, I would like to know if you feel the need to be represented by the local Teamsters Union?"

Q. And what, if anything, did you say in response?

A. I told him, "Yes."

Q. Was anything else said?

A. No.

Q. What, if anything, did you observe Mr. Cobis doing after he talked with you?

A. He marked it down on a piece of paper that he had. And he went around to the rest of the employees in the shop.

Q. What, if anything, did you do after you talked to Mr. Cobis?

A. Well, while Mr. Cobis was going around the shop, I went around the back of the shop and told the guys that had signed cards that Mr. Cobis was going to come up and ask them that question. And for them to tell him no, or that they didn't know.

Assembler Charles Austin testified that, on or about July 17, Foreman Cobis asked him how was he going to vote in the union election and he told him he was going to vote against the Union.

Michael Mann also testified that, prior to the union election on July 20, Foreman Cobis came to him and asked him if he were interested in having a union in the plant. He replied that he did not know and Cobis asked him if he could possibly come up with a "Yes" or "No" answer and that he (Cobis) would be back to him. A few minutes later Cobis returned and asked him for his answer and Mann said, "No, I wouldn't be interested."

Richard Poirier testified that, on or about July 16 or 17, Foreman Cobis asked him how he felt about being represented by a third party coming into the shop. Poirier said he would be favorable to it because he had formerly been a member of the Teamsters, that he had a withdrawal card and was familiar with their activities. Thereafter, he said he observed Cobis approaching assembler Charles Austin.

At 10 a.m. on July 20, 1979, an election conducted by the National Labor Relations Board was held; the Union won by a vote of 13 to 10.

Respondent did not dispute the above testimonial accounts of Richard Porter, Charles Austin, Michael Mann, and Richard Poirier regarding Foreman Cobis' inquiries about their union interests or sympathies. Even if Respondent (Cobis) had denied their respective accounts, their testimony is nevertheless credited because I was persuaded by the consistency of their versions, as well as by their demeanor on the stand, that they were testifying truthfully. Consequently, I conclude and find upon this credited testimony that Respondent, through its foreman, Don Cobis, did interrogate its employees (between July 19 and 20, 1979) about their union interest, desires, and sympathies, by asking them if they felt the need to be represented by the local Teamsters, if they were interested in having a union in the plant, how they felt about being represented by a third party in the plant, and asking them how they were going to vote in the upcoming union election.

Such interrogation by Cobis clearly established knowledge on the part of Respondent about the union activities of its employees because Cobis is, by stipulation of the parties, a supervisor within the meaning of the Act. As such, Cobis' interrogation of the employees was coercive in nature and therefore violative of Section 8(a)(1) of the Act.

I find that the foregoing credited evidence constituted union animus on the part of Respondent (Foreman Don Cobis).

*E. Respondent's Conduct Subsequent to the Union Election on July 20*

*Richard Poirier* testified that, subsequent to the election on July 20, Shop Foreman Don Cobis said to him, "I want to thank you, Poirier, for the way you voted in the election, after all I have done for you." Poirier said he responded, "I don't know what you mean, Don, it was a secret ballot. Nobody knows how I voted"; and that Cobis then said, "I know," shaking his head.<sup>3</sup> Richard Porter corroborated Poirier's testimony in this regard.

About closing time on the same day (July 20), Poirier said he asked Cobis would there be any work on Saturday and Cobis said he did not think there would be enough people coming in to warrant it. This was the first time to his knowledge, Poirier said, work was not available on a Saturday.

Similarly, assembler *Charles Austin* testified that although the assemblers were scheduled to work on Saturday, July 21, just before closing time on July 20 Foreman Cobis told the assembly employees there would be no overtime work on Saturday because vacation started the following week, and Cobis acknowledged that he so told the assembly employees. Cobis also acknowledged that he was aware of the union campaign by the Teamsters which resulted in an election on July 20. He admitted he told the employees in the assembly department that there would be no more overtime but, in fact, he allowed Cummings, Smith, and Harris from the machine shop to work 5 hours on Saturday, July 21, to prepare for reopening the plant after vacation on August 6.

Respondent's plant closed for annual vacation July 21 through August 5, 1979.

Respondent's plant reopened and the employees as well as former employee Robert Lombard returned to work on August 6, 1979. Lombard worked in the machine shop on that day and on the following day, August 7, 1979, Foreman Cobis met with the assembly employees at 8 a.m. and advised employees that there would be no more overtime in the assembly department. He also announced that Bob Lombard would replace Richard Porter as leadman in the assembly department. Other nonassembly employees still worked overtime. According to the testimony of Foreman Cobis, work in the assembly department was slow when Bob Lombard returned to work on August 7, because there was a parts-flow problem. Lombard was instrumental in reducing the leadtime work by making or milling parts on overtime. Cobis further stated that the amount of overtime worked by the assemblers prior to July 20 was due to the inexperience of the assembly workers, Porter being the most senior (1 year) of the assembly workers. In this regard,

<sup>3</sup> I credit Poirier's testimony in this regard not only because I was persuaded by his demeanor as a witness, but also because Poirier's account coincides with the facts. In other words, it is factually established in this record that Foreman Cobis was good to Poirier, in that he was lenient with Poirier's absenteeism due to alcoholism, and gave him many chances to correct his problem without suspending or terminating him prior to the union election.

Lombard said the assembly workers ranged in order of most experience as follows: Bob Lombard, Yerkins, Dower, Porter, Poirier, and Austin.

Porter further testified that, on the day after Bob Lombard took charge of the assembly department (August 7), Lombard approached him and said he did not want any hard feelings between them because he had no intention of taking Porter's job. In fact, Lombard said that, when he originally came back, it was his understanding that he was returning as a machinist because he did not want anything to do with the assembly department.<sup>4</sup>

*Richard Porter* also testified that on August 7, when Foreman Cobis advised them that there would be no overtime on Saturday, he said Cobis also said, "*Ken Gorman was down on the shop for some reason*, that he was complaining about talking in the shop, and specifically told Charles Austin he was talking too much." Porter further testified that at the end of the meeting Foreman Cobis said, "I'm sure I don't have to tell you why your overtime has been taken away." Austin said that he (Austin) said, because of the union election, and Cobis did not verbally respond but shook his head. Cobis denied the latter's accusations.

Based upon the foregoing credited evidence of record, it is without dispute that subsequent to the 10 a.m. union election on July 20, 1979, Respondent's foreman, Don Cobis, advised assembly employees (Richard Poirier and Charles Austin) that there would be no overtime work on the next day (Saturday, July 21). This was very unusual since overtime work on Saturdays had been consistently in effect for months. Foreman Cobis also told the employees during a meeting following the plant's 2-week vacation on August 6, 1979, that there would be no more overtime assembly shop work. Although Respondent attributed its cessation of overtime work to the return of its skilled machinist (Lombard), who it contends was able singlehandedly to reduce the historical backlog of work, when the very timing of Lombard's return is compared with the employees' victorious union election a significant question of credibility is raised. In this regard it is particularly observed that Foreman Cobis started announcing the termination of overtime work immediately after the election on the same day the election was held. At this juncture, Bob Lombard had not been rehired.

Moreover, it is further observed that, when Cobis advised the assembly employees on August 6 or 7 that there would be no more overtime work, skilled machinist Bob Lombard had not commenced work, and certainly could not have caught up the backlog of work. It may therefore be reasonably inferred from Respondent's abrupt termination of overtime work on the heels of the Union's victorious election, while a backlog of work still existed, that Respondent's real motive for terminating the overtime work was the success of the employees in unionizing the plant. This position is further supported by the aforefound union animus and the 8(a)(1) unlawful

<sup>4</sup> I credit Porter's testimony in this respect because I was persuaded by his demeanor as well as by the consistent chronology of the credited evidence of record, *supra* and *infra*, that he was telling the truth.



coercive conduct of Respondent. Consequently, I further conclude and find that Respondent discriminated against its employees by terminating their overtime work on July 20 and thereafter, because of their union and concerted activities, in violation of Section 8(a)(3) of the Act.

*F. Respondent's Conduct When it Reopened Following Vacation*

Charles Austin testified that about 3:30 p.m. on August 16, in the assembly department, he asked fellow employee Jack Crowley if he knew Respondent was a union shop and therefore required him to join the Union if he wanted to remain employed. On the next morning shortly after he started work, Austin said he was called to the office by Foreman Cobis, who said he did not want him talking to anyone about union activities on company time. Austin said he replied he was not talking on company time but at the end of the work shift. On Monday, August 27, 1979, Austin said Foreman Cobis informed him that he was being laid off. Later that morning, Austin asked Gorman if he was being laid off and Gorman said, "Yes." He then asked why and Gorman said because his work was unsuitable. On August 29, 1979, he received a letter from Respondent terminating his employment. On August 30, he asked Foreman Cobis was he laid off or terminated and Cobis said, "Laid off, that the letter contained a typical [sic] error by the secretary; and that there was no reason why he should be fired." Cobis denied that he stated there was no reason why Austin should be fired. Lombard admitted he told Austin he was surprised he was terminated.

Austin further testified that he had not received any warnings or complaints about his work performance. Leadman Bob Lombard admitted he did not, at any time, warn Austin about his work performance. However, in March 1979, Austin said he had a discussion with Cobis about going to work at the Veterans Administration hospital, which he was seriously considering. Cobis told Austin if he had an opportunity to improve his work situation he should take advantage of it. A couple of days later Austin told Cobis that had he rejected the VA job because he was happy working at Respondent. Austin said that he then asked Cobis if his job was secure at Gorman and Cobis said, "Yes." Cobis did not testify that he had warned Austin about his work but, when he was recalled to the stand, he testified that he warned Austin a few times about talking and about his work performance.<sup>5</sup> Austin admitted he had problems assembling some

of the machines and that he was generally given simple tasks, less skilled work to perform, and was the only one asked to do such jobs. Such tasks were sandblasting, preassembly, inventory, putting away stock, and janitorial or general cleaning which everyone did on Friday mornings.

With respect to Austin's work performance, former leadman Richard Porter testified as follows:

A. Mr. Cobis asked me—at the time, I had taken Mr. Austin and put him on the Two plus Two machines. And Mr. Cobis asked me how he was doing. And I told him that really he surprised me at times. There was some things that you would expect him to have trouble with, and he didn't have. And other things, he wasn't too sure of.

And Mr. Cobis said, "Well, if he can't do the job, use him someplace else."

Based upon the foregoing credited testimony, I conclude and find that, on August 16, Respondent, in a series of postelection actions, ordered Austin not to discuss the Union with fellow employees on company time. Although Austin denied that he discussed the Union with Crowley on company time the day before, Cobis nevertheless recommended or acquiesced in Respondent's layoff and ultimate termination of Austin on August 27. Respondent contends that it discharged Austin because his performance was poor and because he was always talking. However, while it is noted that Austin was known by management, including leadmen Bob Lombard and Richard Porter, as not being very proficient in his work, Respondent nevertheless tolerated whatever his degree of inefficient work performance until the Union won the election on July 20, and after it learned on August 16 that Austin, in urging Crowley to join the Union, was in fact supporting the Union.

The record is clear that Respondent (including Cobis and Bob Lombard) never warned Austin about his work performance but, instead, precipitously suspended, and ultimately discharged, him on August 27. When the timing of Austin's discharge is compared with the date of the union election, Respondent's admonition about Austin talking about the Union, and Respondent's coercive and unlawful conduct herein discussed, *supra* and *infra*, it is well established by the evidence that Respondent's discharge of Austin was motivated by the activities of Austin and other employees on behalf of the Union. Consequently, Respondent's discharge of Austin was discriminatory and in violation of Section 8(a)(3) and (1) of the Act.

Richard Porter further testified that in late August, while walking through the shuttle department, he overheard Foreman Cobis tell Leite, "You should see the demands the Union is asking," "They are ridiculous; just like the Bozos who want the Union." Porter also said that, during the last week in September, he overheard a discussion about holidays between Cummings and Foreman Cobis. They were standing by a posted notice that described the holidays and Foreman Cobis turned to the notice and said, "As far as I can read, the next holiday is Columbus Day. Can't you read that, or are you Union

<sup>5</sup> I credit Charles Austin's testimony that Foreman Cobis did not warn him about his work performance and I discredit Cobis' latent testimony that he did so warn Austin, for the following reasons:

On direct examination neither Foreman Cobis nor any other representative of Respondent furnished any evidence that Austin had been warned about work performance. The record shows, through the testimony of Cobis, Lombard, and Porter, that Respondent, including Cobis, was rather tolerant about any work deficiencies Austin may have had prior to the union election on July 20. Moreover, Respondent's (Cobis') layoff-discharge of Austin was only 5 weeks after the Union won the election, only several days after Cobis heard about Austin talking to a fellow employee about the Union and had been warned about such talk, when finally Respondent terminated his employment on August 27. Additionally, I was persuaded by Cobis' demeanor on the witness stand that he was not testifying truthfully in this regard.

material?" Porter acknowledged that he and Austin are friends, but he testified that Austin is a slow assembler, that he was the least competent in the assembly department, but was no more talkative nor away from his workbench any more than any other employee in the assembly department.<sup>6</sup>

I further find that the above-credited evidence established the intensity of Respondent's (Cobis') animus towards the employees' unionization of Respondent's plant.

*Michael Mann* testified that he voted in the election on July 20 and in late August, overheard Foreman Cobis tell fellow employee Helen that "he knew how he [Mann] voted because blood was thicker than water [referring to his consanguine relationship to Porter]." When he returned from vacation, in August, Foreman Cobis asked him to come to the office at which time Cobis said, "Mike, I want to know where you stand on this union business," and Mann told Cobis he had to join the Union in order to keep his job. Thereupon, Cobis asked him not to join the Union until there was a contract between Respondent and the Union because Respondent was going to fight the closed shop.<sup>7</sup>

#### *G. Respondent's Discharge of Richard Poirier*

Respondent's shop foreman Don Cobis testified that on June 27, 1979, he went over to Charles Austin and said: "Charlie, I hate to tell you this, but we are going to have to let you go." He said that he told Austin, "Your work isn't up to par. You've been talking, talking, talking; and finally, you know, enough is enough. And we're going to have to let you go." Cobis said he recommended Austin's discharge and that leadman Bob Lombard agreed with him (on the Friday before Monday, June 27) to discharge Austin.

Cobis also acknowledged that he sent the discharge letter (G.C. Exh. 3) to Poirier on June 27, for excessive absenteeism and lack of work due to a parts-flow problem in the assembly department. He said the decision to discharge Poirier was a joint decision between himself (recommending) and Gorman.

The record is replete with evidence establishing that Richard Poirier is an alcoholic and that he frequently entered detoxification centers for treatment on most occasions when he was absent from work. The record shows that Poirier was absent from work due to alcoholism on the following dates in 1979: January 10 through January 12, January 22 and 23, February 5 through February 9, March 30 through April 19, April 30 through May 7, July 9 and 10, from noon on July 13 through July 16, and from noon on August 17 through August 27.

<sup>6</sup> I credit Porter's testimony not only because I was persuaded by his demeanor that he was testifying truthfully, but particularly because his account is consistent with the tenor of all of the credited evidence of the record.

<sup>7</sup> Although Foreman Cobis might have denied that he held the above-described conversations, I do not credit his denials because I was not persuaded, as I observed him testify, that he was a truthful witness. Moreover, Mann's testimony, which I credit, coincides with the logical consistency of all the evidence establishing Foreman Cobis' union animus and his curious interrogation of the employees about their union interests, as well as his unlawful discriminatory retaliation against them hereinbefore described.

When Respondent's foreman, Don Cobis, was asked to explain Respondent's disciplinary policy, he said that he disciplines employees but does not follow a written policy of discipline. Nor is such a policy explained to employees when they are hired. He said, as far as policy is concerned, Respondent only issues oral warnings, and no suspensions, but does issue a letter of discharge. He further explained that there may be several undesignated number of warnings and that he generally warns employees before discharging them. However, the nature and number of warnings prior to such discharge is within his discretion. When Foreman Cobis was asked to describe the times and substances of any warnings he gave Poirier prior to his discharge, Cobis said that after Poirier returned to work in January or February the latter explained to him that he had a drinking problem, that he was going to get himself straight; and that Cobis responded, "Okay, Dick. We'll let it slide," "Let's not let it happen again."

During his absence from April 2 through April 19, Poirier called Foreman Cobis and advised him that he was in a detoxification center, and said, "I suppose that's my job." Cobis said that he responded, "We'll talk about it when you get out. Come down and see me when you get out." Cobis said that generally when Poirier was absent his absences did not cause any interruption in production. However, he stated that Poirier's April 2 through April 19 absence necessitated Walter Yerkins' working in Poirier's place. Cobis said he put Poirier on notice (unexplained).

Foreman Cobis stated that, when Poirier was absent July 18 through July 27, he recommended to Gorman that Poirier be fired. He further testified that Poirier's work was fine, adequate, and that he was as good, or better, than Yerkins, but not as good as Porter and Dower. He acknowledged that, 6 months prior to the union election in July, employees worked overtime from 7 a.m. to 5 p.m. on Saturdays; and that he granted overtime work to all employees except marginal workers and employees who did not want to work overtime. Poirier and Austin worked overtime at first but then elected not to work overtime thereafter. He had received complaints from Jim Roselle (the wiring man) about the work of Poirier and Austin. Overtime work was no longer needed since Lombard returned and caught up on production. Poirier and Austin were discharged and not replaced, because the work load had greatly improved as a result of the workers in assembly being better trained and supervised by Lombard. Consequently, Cobis said, Respondent had more production in the assembly department with fewer workers.

Assembler *Richard Porter* testified that, in May 1979, Foreman Cobis had a discussion with him regarding Richard Poirier's absenteeism and his being in the detoxification centers. However, he said that whenever Poirier was out no one worked on his machines because he always had a surplus of machines completely assembled. Porter said he has never known Respondent to talk to the employees or to post a notice about production or productivity in the assembly department.

The record shows that Poirier was employed by Respondent in mid-October 1978, to work in assembly; that he was able to assemble several machines; and that he was hired at a starting rate of \$4 per hour which is 25 cents higher than the starting wage.

Foreman Cobis said that Poirier generally called in whenever he was absent and that he called in during his February absence and advised Cobis that he was in a detoxification center. Cobis simply said, "All right. Get back in here." Poirier said that, when he discussed his problem with Cobis on his return, he admitted he had a drinking problem and was going to try to secure treatment, and Cobis said, "I hope you do."

Poirier further testified that, when he returned after his absence of March 30 to April 19, Cobis said to him, "You really do have a problem, don't you?" And he said yes. He said when he called in during his absence of April 30 to May 7 and advised that he was in the detoxification center, Cobis said, "All right, get your butt back in here. I need you." When he returned to work all Cobis said to him was: "Are you straightened out now," and he replied, "I hope so." When he returned from his absences on July 9, 10, and 16, Poirier said Foreman Cobis did not say anything to him.

Poirier further testified that he left work early on Friday, August 17, with approval and thereafter started drinking and wound up in a detoxification center for 10 days. During that period of time he could not recall whether he called and notified Respondent of his whereabouts. However, on August 28, he received a letter (G.C. Exh. 3) from Respondent notifying him that he was terminated effective August 27, due to excessive absenteeism. Poirier categorically denied that Foreman Cobis ever warned him that he would lose his job if he did not control his drinking-related absences. However, on cross-examination, Poirier admitted that after his April stay in the detoxification center Foreman Cobis told him, "Look, Dick, you can't keep on. If you do it again, we are going to have to let you go."

#### H. Analysis and Conclusions

The credited testimony of record shows that when Foreman Don Cobis asked dischargee Richard Poirier, on or about July 17, how he felt about being represented by a third party (the Union) coming into the shop, Poirier advised Cobis he was favorable to unionization and formerly had been a member of the Teamsters. Also, Foreman Cobis told Poirier immediately after the election on July 20 that he wanted to thank him for the way he voted in the election. Such conversations by Cobis clearly established that he (Respondent) had actual knowledge and/or highly suspected that Richard Poirier sympathized with, and supported, the Union which prevailed in the election by a vote of 13 to 10.

Likewise, the undisputed and credited testimony of record shows that, on or about August 16, Foreman Cobis learned that employee Charles Austin was discussing the Union with fellow employee Jack Crowley. On the following day (July 17), Cobis reprimanded Austin, warning him against talking to anyone about the union activities on company time. Since Austin confirmed Cobis' knowledge of his union support by not denying

his discussion (favorable to the Union) with Crowley, but by advising Cobis that the discussion did not occur on company time, Austin's union sympathies and interest then became well known to Respondent.

Moreover, the record is replete with credited testimony of Cobis' aforefound diligent efforts (unlawful interrogation of employees) to ascertain how individual employees felt about unionization, or how they voted in the election. Said interrogation was carried out by Cobis, without assuring employees against company reprisal. I am therefore convinced upon the foregoing evidence that Cobis succeeded in acquiring knowledge of Austin's and Poirier's organizational desires and support for the Union, as has been amply established by the record.

Additionally, immediately after the election on July 20, Foreman Cobis told Poirier that Cobis knew how Poirier voted in the election. Cobis also implied to bookkeeper Helen Gleason, that he knew how Michael Mann voted in the election. By such conduct, Respondent gave employees (Poirier and Mann) the impression that their union activities were under surveillance by Respondent. In so doing, Respondent violated Section 8(a)(1) of the Act.

Other antiunion conduct evidenced by the record shows that on July 17, only 3 days before the upcoming election of which Respondent was fully aware, Respondent (Gorman) posted a notice to employees in which it stated that "some employees were not pulling their weight." The record further shows that Foreman Cobis referred to union adherents as "bozos" and described the Union's demands as "ridiculous." I find that such conduct by Respondent, in the midst of the Union's campaign, could only have been carried out by Cobis (Respondent) in an effort to intimidate the employees and denigrate the Union. In doing so, Respondent also violated Section 8(a)(1) of the Act.

As found under section D, *supra*, on the day of the election (July 20), Respondent announced that there would be no overtime work on the next day (Saturday, July 21), although some nonassembly employees did work overtime. About 2 weeks after the Union won the election, Respondent terminated all assembly overtime work which had been consistently performed for 6 or more months prior thereto. At the time of said termination, Respondent still had its historical leadtime or backlog of work, which could have been diminished by overtime work.

Thus, Respondent's abrupt termination of such overtime work, immediately after the Union won the election, was obviously in retaliation against the employees, a majority of whom had voted in favor of the Union. In fact, Foreman Don Cobis said as much, when he told employees (Porter and others) on August 7 that Respondent (Ken Gorman) was "down on the shop for some reason"; that he (Cobis) was sure he did not have to tell them why their overtime was taken away; and when Porter or Austin asked Cobis was overtime terminated because of the Union, Cobis answered by shaking his head in the affirmative. Consequently, such retaliatory conduct by Respondent was also discriminatory and, therefore, in violation of Section 8(a)(3) of the Act.

*Wright Plastic Products, Inc.*, 247 NLRB 635 (1980); and *Rock Tenn Company, Corrugated Division*, 234 NLRB 823 (1978).

Pursuant to credited evidence under section E, *supra*, it was found that, on August 17, assembler Charles Austin was called into the office and reprimanded by Foreman Cobis for talking to employee Crowley the day before, about joining the Union. Austin admitted that he was talking about the Union but advised Cobis that the conversation did not occur on company time. Thus, Cobis thereupon had confirmed knowledge that Austin was supportive of the Union. Nine days later (August 27), Cobis called Austin into the office and, without any prior warning, summarily advised him that he was laid off. On the same day, a letter was sent to Austin advising him that he had been terminated, effective August 29.

At the hearing herein, Respondent contended that it terminated Austin for talking too much and because his performance was unsuitable. However, a careful examination of the credited evidence readily reveals that, while Austin was not very proficient in his work performance, Respondent had never warned him about his performance and on only two occasions warned him about talking on the job. Former leadman Richard Porter credibly stated that Austin did not talk any more than other employees, and I credit Porter's testimony in this regard. Moreover, it is particularly noted that Respondent had been continuously tolerant of whatever work deficiencies Austin had until it precipitously terminated his employment, without any prior warning, only 9 days after it learned he was supportive of the Union, and only 5 weeks after the Union won the election. It is therefore obvious that Respondent's contended reasons for discharging Austin were contrived, as a pretext, to conceal its otherwise discriminatory and unlawful layoff and discharge of him on August 27; namely, his efforts to recruit Crowley's membership in the Union.

#### Respondent's Discharge of Richard Poirier

The testimony of Richard Poirier and Plant Foreman Don Cobis is essentially without conflict that Poirier had a problem with alcoholism which largely accounted for his absenteeism from January to August 27, 1979. It is well established by the evidence that, although prior to the union election on July 20 Poirier's absenteeism was considerable, if not excessive, nevertheless, Respondent did not timely warn or reprimand Poirier about his absences. On the contrary, the evidence shows that Respondent tolerated Poirier's absenteeism because, as it (Cobis) acknowledged, Poirier was a good assembler and his absences did not interfere with, or adversely affect, production. Additionally, the evidence shows that Respondent had a liberal disciplinary policy which was loosely enforced within the individual discretion of Foreman Cobis.

More specifically, the record shows that, while Respondent's disciplinary policy provided for several oral warnings and a letter of discharge, Respondent acknowledges that it only warned Poirier about his absences on one occasion. In this regard, Foreman Cobis testified that in January or February 1979 he said to Poirier after the latter returned to work, "Okay Dick. We'll let it

slide. . . . Let's not let it happen again." According to Poirier's testimony, Cobis did not give him the above admonition in January or February but, instead, in April or May 1979. At that time, Poirier said, Cobis said, "Look, Dick, you can't keep on. If you do it again, we are going to have to let you go." I find both versions of what Cobis said to Poirier sufficient to constitute a warning.

However, since Poirier and Cobis have stated conflicting dates as to when the warning was given to Poirier, it is noted that Mrs. Poirier testified that, after Poirier returned to work in January or February 1979, she asked Foreman Cobis to give Poirier another chance. Since the date of Mrs. Poirier's request coincides with the date Cobis stated he warned Poirier (January or February), I credit her testimony, which lends some credibility and probative value to Cobis' testimony in this respect. Accordingly, I find that Cobis gave Poirier the above-described warning in January or February, instead of April or May, as Poirier testified. In any event, whether Cobis' warning was given to Poirier in January or February, or in April or May, it is clear that either date was quite remote in time, both with respect to the advent of the union election (July 20), and to the subsequent absences of Poirier due to alcoholism in May and July.

In other words the evidence shows that Respondent (Foreman Cobis and others) continued to tolerate Poirier's absences after its January or February warning to Poirier about absences. When Respondent knowingly failed to discipline Poirier for his absences due to alcoholism in May and July (as the record clearly shows), it obviously condoned Poirier's prior, and his May and July, absences. At least, such condonation may be reasonably inferred from Respondent's failure to discipline Poirier when it knew about his absences and his problem. *General Warehouse Corp.*, 247 NLRB 1073 (1980); and *Lafayette Radio Electronics Corporation*, 216 NLRB 1135 (1975).

Consequently, when Respondent, without any prior warning, precipitously laid off Poirier on August 27, after his first period of absence since the union election on July 20, it was clear that it had lost its renewed tolerance to his absenteeism. What is interesting about this is how close to the Union's victory in the election that Respondent lost its renewed tolerance and abruptly terminated Poirier without any warning; and also how, during this hearing, Respondent tried to revive its only (January-February) warning given Poirier, which is not only remote (6 months) in time, but also which was vitiated by Respondent's condonation of subsequent absences of Poirier in May and July. Under these circumstances, it may be reasonably inferred from the evidence that Respondent (Cobis), in discharging Austin and Poirier, retaliated against its employees for selecting the Union as their representative.

There is no dispute in fact, nor in logic, that the excessive absenteeism of Poirier, subsequent to Respondent's warnings to him in January or February, appeared to provide a reasonable and just basis for Respondent to discharge him, until Respondent condoned his May and July absences. Moreover, when Respondent's manifested union animus (telling Poirier he voted for the Union in



spite of all he, Cobis, had done for him) and its 8(a)(1) unlawful conduct herein found are considered along with the precipitous nature of the discharges of Austin and Poirier, in relation to the recent time of the union election, it becomes clear that the reasons advanced by Respondent for the discharge of Austin and Poirier are pre-textual.

Finally, when the foregoing series of events is carefully analyzed, it also becomes clear that Respondent's intensely manifested animus towards unionization of the shop, its curious interrogative conversations carried on with Poirier and other employees about their interest in a third-party representative, its sudden threat to abolish, and, in fact, its discriminatory abolition of overtime work on August 7, in addition to its precipitous discharge, without warning, of Austin and Poirier in August, clearly demonstrate Respondent's anger over the employees' victory in the union election a few weeks earlier. Respondent's anger is further manifested by its efforts to rid itself of those employees it could more easily terminate, whom it knew or suspected, supported the Union. Such evidence of an antiunion motive is too voluminous and probative to attribute to fortuity or coincidence. As a matter of fact, common experience discredits it. I therefore find that Respondent's discharge of Austin and Poirier was substantially, if not totally, motivated by their support for the Union and the employees' victory in the union election. As such, the discharges were discriminatory and in violation of Section 8(a)(3) of the Act. Since counsel for the General Counsel does not request reinstatement of Charles Austin, it is deemed that Austin has either been offered reinstatement or does not wish to be reinstated. However, if he has not been offered reinstatement, I will recommend his reinstatement.

#### IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with the operations of Respondent described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

#### V. THE REMEDY

Having found that Respondent has engaged in unfair labor practices warranting a remedial order, I shall recommend that it cease and desist therefrom and that it take certain affirmative action to effectuate the policies of the Act.

It having been found that Respondent on several occasions and in various forms interfered with, restrained, and coerced its employees in the exercise of their Section 7 protected rights in violation of Section 8(a)(1) of the Act, by coercively interrogating them about their union interest, desires, and activities, telling them after a Board-conducted election that their overtime work would be eliminated because the Union won, creating the impression that employees' union activities were under surveillance by Respondent, reprimanding employ-

ees for talking to fellow employees on behalf of the Union, and ridiculing employees, referring to them as "bozos" and to their inability to read in relation to their membership in the Union; and that Respondent discriminatorily eliminated overtime work for assembly employees because they supported the Union, and discriminatorily discharged employees because they supported the Union and because the Union won the election, all in violation of Section 8(a)(3) of the Act, the recommended Order will provide that Respondent make all assembly employees deprived of work or overtime whole for any loss of earnings within the meaning and in accord with the Board's Decision in *F. W. Woolworth Company*, 90 NLRB 289 (1950), and *Florida Steel Corporation*, 231 NLRB 651 (1977),<sup>8</sup> except as specifically modified by the wording of such recommended Order.

Because of the character of the unfair labor practices herein found, the recommended Order will provide that Respondent cease and desist from or in any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act. *N.L.R.B. v. Entwistle Mfg. Co.*, 120 F.2d 532, 536 (4th Cir. 1941).

Upon the basis of the above findings of fact and upon the entire record of this case, I make the following:

#### CONCLUSIONS OF LAW

1. Gorman Machine Corporation is an employer engaged in commerce with the meaning of Section 2(6) and (7) of the Act.

2. General Teamsters, Chauffeurs, Warehousemen and Helpers of Brockton, Local 653, is, and has been at all time material herein, a labor organization within the meaning of Section 2(5) of the Act.

3. By coercively interrogating its employees about their union interest, desires, and activities, Respondent violated Section 8(a)(1) of the Act.

4. By telling employees it knew how they voted in the union election, Respondent created the impression among employees that their union activities were under surveillance by Respondent, and thereby Respondent violated Section 8(a)(1) of the Act.

5. By telling employees, subsequent to the union election, that their overtime work was terminated because the Union won the election, Respondent restrained and coerced employees in violation 8(a)(1) of the Act.

6. By ridiculing employees, calling them "bozos," and making references to their inability to read in relation to their union interest, Respondent restrained employees in violation of Section 8(a)(1) of the Act.

7. By reprimanding an employee for talking to a fellow employee on behalf of the Union, Respondent restrained its employees in violation of Section 8(a)(1) of the Act.

8. By eliminating overtime work of the assembly employees on and after August 7, 1979, Respondent discriminated against assembly employees in violation of Section 8(a)(3) of the Act.

<sup>8</sup> See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

9. By discriminatorily discharging Richard Poirier and Charles Austin on August 27 and 29, respectively, Respondent violated Section 8(a)(3) of the Act.

10. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

#### ORDER<sup>9</sup>

The Respondent, Gorman Machine Corporation, Brockton, Massachusetts, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Interrogating employees about their union interests, desires, and activities.

(b) Creating the impression among employees that their union activities are under surveillance by Respondent.

(c) Telling employees their overtime work was in fact eliminated because the Union won the election.

(d) Ridiculing employees, by calling them "bozos," and making references to their inability to read and their support for, or membership in, the Union.

(e) Reprimanding employees for talking to fellow employees on behalf of the Union.

(f) Eliminating overtime work for employees because they supported and selected the Union as their collective-bargaining representative.

(g) Discouraging membership in, or activities on behalf of, General Teamsters, Chauffeurs, Warehousemen and Helpers of Brockton, Local 653, the Union herein, or any other labor organization, by discharging employees who support such organizations.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Reinstatement and offer to assembly department employees overtime work as it was formally scheduled, and reimburse Richard Poirier, Richard Porter, Walter Yerkins, and Thomas Dower for moneys they lost as a result of the unlawful elimination of overtime work.

(b) Offer to Charles Austin and Richard Poirier immediate and full reinstatement to their former positions or, if such positions no longer exist, to substantially equivalent positions without prejudice to their seniority or other rights previously enjoyed, and make them whole for any loss of pay suffered by reason of the discrimination against them, with interest, in the manner described in the section of this Decision entitled "The Remedy."

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at Respondent's plant and place of business located in Brockton, Massachusetts, copies of the attached notice marked "Appendix."<sup>10</sup> Copies of said notice, on forms provided by the Regional Director for Region 1, after being duly signed by Respondent's authorized representative, shall be posted by it immediately upon receipt thereof, and be maintained by Respondent for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for Region 1, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

IT IS FURTHER ORDERED that the complaint be dismissed insofar as it alleges violations of the Act not found herein.

<sup>9</sup> In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

<sup>10</sup> In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."